STATE OF MICHIGAN

COURT OF APPEALS

GERDA HART,

Plaintiff-Appellant,

v

WAYNE WATKINS, INC., d/b/a PONDEROSA STEAKHOUSE OF MOUNT MORRIS,

Defendant-Appellee.

UNPUBLISHED
March 1, 2005

No. 251633
Genesee Circuit Court
LC No. 02-074858-NO

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's first alleges that the trial court erred in granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) because issues of material fact exist regarding whether the condition at issue was open and obvious. We disagree. On appeal, a trial court's decision regarding a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In ruling on a summary disposition motion, a trial court must determine whether an issue of material fact existed or whether the moving party was entitled to a judgment as a matter of law. *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). The factual sufficiency of the complaint is tested when a motion for summary disposition pursuant to MCR 2.116(C)(10) is raised. *Corley v Detroit Board of Education*, 470 Mich 274, 278; 681 NW2d 342 (2004). "In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." *Id.* When the evidence offered by the opposing party fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* All reasonable inferences must be resolved in favor of the nonmoving party. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995).

To establish a prima facie case of negligence, a plaintiff must prove: 1) that the defendant owed a duty to the plaintiff; 2) that the defendant breached the duty; 3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and 4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). "In

general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). The open and obvious doctrine, however, attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Bertrand, supra* at 612. Under most circumstances, a possessor of land is not required to warn or protect an invitee from an open and obvious danger. *Lugo, supra* at 517. "A condition is open and obvious if it is reasonable to expect that an average person of ordinary intelligence to discover the danger upon casual inspection." *O'Donnell v Garasic*, 259 Mich App 569, 574; 676 NW2d 213 (2003).

Viewing the evidence in a light most favorable to plaintiff, the condition present in the instant case was open and obvious. The floor mat on which plaintiff slipped and fell was located just inside of the front door of the restaurant and was not obstructed from the view of anyone entering or exiting the restaurant. Plaintiff acknowledged that she did not have any difficulty seeing the floor mat and that nothing was obstructing her view of the floor mat. Plaintiff also acknowledged that a floor mat is an ordinary condition that people encounter every day. In addition, the color photographs of the transition area between the floor mat and the tile floor show a readily observable contrast between the floor of the lobby and the floor mat. The photographs also indicate a readily observable, raised edge on the corner of the floor mat. It is reasonable to expect that an average person of ordinary intelligence in plaintiff's position would notice the contrast and transition and the raised edge. In addition, plaintiff had traversed the area in which the floor mat was located on this day once before. She entered the building on that occasion without incident. No reasonable juror could conclude that the condition in the instant case and the danger it presented was not open and obvious. *O'Donnell, supra*.

Plaintiff next alleges that the trial court erred in granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) because issues of material fact exist regarding whether special aspects were present that would make the condition effectively unavoidable or unreasonably dangerous. We disagree. If special aspects of a condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk. *Lugo, supra* at 517. Special aspects of a condition exist when the open and obvious condition, if not ameliorated or avoided, would create a uniquely high likelihood of harm or severity of harm. *Id.* at 519. A uniquely high likelihood of harm emerges when a person cannot effectively avoid the dangerous condition. *Id*.

This facts of this case do not involve special aspects of an open and obvious condition. Plaintiff negotiated her way around the floor mat upon entry and exit many times over the years in which she visited defendant's restaurant. The condition was not effectively unavoidable in light of the slight raised edge on the mat and the layout of the restaurant.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio